

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Koch, et al.	]	
Serial No.: 10/710,845	]	Examiner: Anthony N. Bartosik
Confirmation No.: 4844	]	
Filed: 08/06/2004	]	Group Art Unit: 3635
For: COMBINATION FLASHING AND	]	
DRAINAGE SYSTEM	]	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION TRAVERSING REJECTION  
EXPLAINING TECHNICAL DIFFERENCES BETWEEN PRESENT INVENTION AND  
HEALY ET AL. (U.S. 3,654,765)  
37 CFR 1.132

To the Commissioner for Patents:

I, Joseph G. Lincourt, being duly sworn, declare as follows:

1. That I am one of the inventors named in the above-captioned patent application.
2. That as past president of York Manufacturing, the assignee of the above-captioned patent application, I have been lecturing to architecture and masonry professionals for the last five years on the topic of flashing selection and installation. Previous to that I was employed at US Felt Marketing and Wicking Systems that sold products to the electric motor industry and I became expert at wicking technology. That, backed up by my Bachelors Degree in Mechanical Engineering, represents my basis for expert status on this topic.

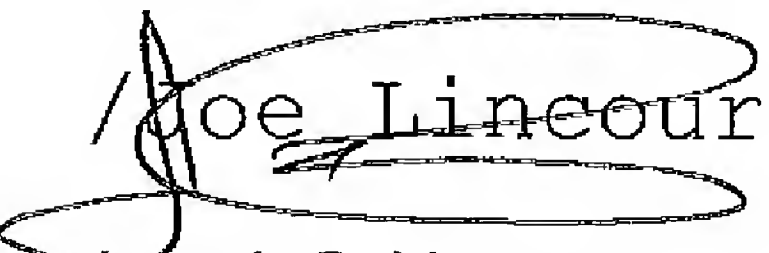
3. That York Manufacturing no longer employs me, and that I have no financial interest in the above-captioned patent application.
4. That, on account of my education, position, and experience, I consider myself to be an expert in the field of flashing.
5. That I am familiar with the claimed invention, namely, a combination through-wall masonry flashing / drainage device comprising a flashing membrane, the flashing membrane having a first side and a second side opposite the first side; a reinforcing cloth adhered to the flashing membrane first side; and a wicking cloth adhered to the flashing membrane second side.
6. That the “filter” material disclosed in the Healy et al. patent is not the same as, analogous to, or in any way equivalent to, the “wicking” material claimed in the above-captioned patent application. They are different materials. They perform substantially different functions, work in substantially different ways, and obtain substantially different results.
7. That the commonly understood definition of a “wicking cloth” as used in the claims and the specification is “a cloth that carries away moisture by capillary action.” This definition is also consistent with the dictionary definition attached to this Declaration as Exhibit 1.
8. That the commonly understood definition of “filter” as used in Healy et al. is “a material that holds back solid particles,” which is supported in Healey et al., col. 2, lines 31 – 42.

9. Because "wick" is substantially different from "filter", and because the term "wick" does not appear anywhere in the reference, Healy et al. does not teach the inclusion of a wicking material on top of a flashing member to prevent debris from blocking the path of moisture, as suggested by the Office.

10. That based on my education and experience, it was not "well-known in the through-wall flashing art to include wicking material on top of a flashing member in order to prevent debris from blocking the path of moisture," at the time the invention was made, which is the position held by the Office in its communication mailed 02/05/2009, paragraphs 6, 10, and 13.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

  
Joseph G. Lincourt

Date: 4-21-09

EXHIBIT 1



# Merriam- Webster's Collegiate<sup>®</sup> Dictionary

TENTH EDITION

Merriam-Webster, Incorporated  
Springfield, Massachusetts, U.S.A.

# 1352 whoredom • wieldy

**whore-dom** \ˈhɔr-dəm, ˈhɔr-, ˈhʊr-\ *n* [ME *hordom* sexual immorality, idolatrous practices, fr. ON *hórdóm* adultery, fr. *hórr*] (12c) 1: the practice of whoring: PROSTITUTION 2: faithless, unworthy, or idolatrous practices or pursuits

**whore-house** \ˈhɔr-ˌhaʊs, ˈhɔr-, ˈhʊr-\ *n* (14c): a building in which prostitutes are available: BORDELLO

**whore-master** \-ˌmas-tər\ *n* (14c): a man consorting with whores or given to lechery

**whore-mon-ger** \-ˌmən-ˌgər, -ˌmən-\ *n* (1526): WHOREMASTER

**whore-son** \ˈhɔr-sən, ˈhɔr-, ˈhʊr-\ *n*, often attrib (14c) 1: BASTARD 2: a coarse fellow — used as a generalized term of abuse

**Whorf-ian hypothesis** \ˈwɔr-fē-ən-, ˈhwɔr-\ *n* [Benjamin Lee Whorf †1941 Am. anthropologist] (1954): a theory in linguistics: one's language determines one's conception of the world

**whor-ish** \ˈhɔr-ish, ˈhɔr-, ˈhʊr-\ *adj* (1535): of or befitting a whore

**whorl** \ˈhwɔr(-əl), ˈwɔr(-əl), ˈ(h)wɔr(-əl)\ *n* [ME *wharle*, *whorle*, prob. alter. of *whirle*, fr. *whirlen* to *whirl*] (15c) 1: a drum-shaped section on the lower part of a spindle in spinning or weaving machinery serving as a pulley for the tape drive that rotates the spindle 2: an arrangement of similar anatomical parts (as leaves) in a circle around a point on an axis 3: something that whirls, coils, or spirals or whose form suggests such movement: SWIRL (~s of snow) 4: one of the turns of a univalve shell 5: a fingerprint in which the central papillary ridges turn through at least one complete circle

**whorled** \ˈhwɔr(-əd), ˈwɔr(-əd), ˈ(h)wɔr(-əd)\ *adj* (ca. 1776): having or arranged in whorls (leaves ~ at the nodes of the stem)

**whor-tle-ber-ry** \ˈhwɔr-tl-, ˈber-ē, ˈwɔr-\ *n* [alter. of earlier *hurtleberry*, fr. ME *hurtleberry*, irreg. fr. OE *horte* whortleberry + ME *berye berry*] (1578) 1: a European blueberry (*Vaccinium myrtillus*); also: its glaucous blackish edible berry 2: BLUEBERRY

**whose** \ˈhʊz, ˈʊz\ *adj* [ME *whos*, gen. of *who*, *what*] (bef. 12c): of or relating to whom or which esp. as possessor or possessors (~ gorgeous vesture heaps the ground — Robert Browning), agent or agents (the law courts, ~ decisions were important — F. L. Mott), or object or objects of an action (the first poem ~ publication he ever sanctioned — J. W. Krutch)

**whose** *pron. sing or pl in constr* (13c): that which belongs to whom — used without a following noun as a pronoun equivalent in meaning to the adjective *whose* (tell me ~ it was — Shak.)

**whose-so-ev-er** \ˈhʊz-sə-ˈwe-vər\ *adj* (1611): of or relating to whomsoever (~ sins ye remit — Jn 20:23 (AV))

**who-so** \ˈhʊ-, (s)ə\ *pron* (12c): WHOEVER

**who-so-ev-er** \ˈhʊ-sə-ˈwe-vər\ *pron* (13c): WHOEVER

**who's who** \ˈhʊz-ˈhʊ\ *n*, often cap both Ws (1917) 1: a compilation of brief biographical sketches of prominent persons in a particular field (a who's who of sports figures) 2: the leaders of a group: ELITE; also: a listing of such figures

**whump** \ˈhwʌmp, ˈwʌmp\ *vi* [imit.] (1897): BANG, THUMP — **whump** *n* \ˈhwi-, ˈwi\ *adv* [ME, fr. OE *hwip*, instr. case of *hwæt* what — more at WHAT] (bef. 12c): for what cause, reason, or purpose (~ did you do it?)

**why** *conj* (bef. 12c) 1: the cause, reason, or purpose for which (know ~ you did it) (that is ~ you did it) 2: for which: on account of which (know the reason ~ you did it)

**why** *n. pl whys* (14c) 1: REASON, CAUSE (wants to know the ~s and wherefores) 2: a baffling problem: ENIGMA

**why** *interj* (1519) — used to express mild surprise, hesitation, approval, disapproval, or impatience (~, here's what I was looking for)

**whyd-ah** \ˈhwi-də, ˈwi-\ *n* [alter. of *widow* (bird)] (1783): any of various mostly black and white African weaverbirds (genera *Euplectes* and *Vidua*) often kept as cage birds and distinguished in the male by long drooping tail feathers during the breeding season

**wick** \ˈwɪk\ *n* [ME *weke*, *wicke*, fr. OE *wēoce*; akin to OHG *wiohha* wick, Mlr *figid* he weaves] (bef. 12c): a bundle of fibers or a loosely twisted, braided, or woven cord, tape, or tube usu. of soft spun cotton threads that by capillary attraction draws up to be burned a steady supply of the oil in lamps or the melted tallow or wax in candles

**wick** *vt* (1949): to carry (as moisture) by capillary action — often used with away (a fabric that ~s away perspiration)

**wick-ed** \ˈwɪk-əd\ *adj* [ME, alter. of *wicke* wicked] (13c) 1: morally very bad: EVIL 2: a: FIERCE, VICIOUS (a ~ dog) b: disposed to or marked by mischief: ROGUISH (does ~ impersonations) 3: a: disgustingly unpleasant: VILE (a ~ odor) b: causing or likely to cause harm, distress, or trouble (a ~ storm) 4: going beyond reasonable or predictable limits: of exceptional quality or degree (throws a ~ fast-ball) — **wick-ed-ly** *adv*

**wicked** *adv* (1980): VERY, EXTREMELY (~ fast)

**wick-ed-ness** *n* (14c) 1: the quality or state of being wicked 2: something wicked

**wick-er** \ˈwi-kər\ *n* [ME *wiker*, of Scand origin; akin to Sw dial. *vikker* willow, ON *veikr* weak — more at WEAK] (14c) 1: a small plant twig or branch: OSIER, WITHE 2: a: WICKERWORK b: something made of wicker — **wicker** *adj*

**wick-er-work** \-ˌwɜrk\ *n* (1719): work consisting of interlaced osiers, twigs, or rods (a cage of ~)

**wick-et** \ˈwi-kət\ *n* [ME *wiket*, fr. ONF, of Gmc origin; akin to ON *wik* corner, *wikja* to move, turn] (13c) 1: a small gate or door; esp: one forming part of or placed near a larger gate or door 2: an opening like a window; esp: a grilled or grated window through which business is transacted 3: a: either of the two sets of three stumps topped by two crosspieces and set 66 feet apart at which the ball is bowled in cricket b: an area 10 feet wide bounded by these wickets c: one innings of a batsman; specif: one that is not completed or never begun (win by three ~s) 4: an arch or hoop in croquet

**wick-ing** \ˈwi-kiŋ\ *n* (1847): material for wicks

**wick-i-up** \ˈwi-kē-əp\ *n* [Fox (Algonquian language of the Fox, Sauk, and Kickapoo Indians) *wikiyapi* house] (1852): a hut used by the nomadic Indians of the arid regions of the western and southwestern U.S. with a usu.



wickiup

oval base and a rough frame covered with reed mats, grass, wood; also: a rude temporary shelter or hut

**wid-der-shins** \ˈwi-dər-shənz\ *adv* [MLG *weddersinnen*, *widersinnen*, fr. *widersinnen* to go against, fr. *wider* back + OHG *widar*] + *sinnen* to travel, go; akin to OHG *sendan* to more at WITH, SEND] (1513): in a left-handed, wrong, or contrition: COUNTERCLOCKWISE — compare DEASIL

**wid-dy** \ˈwi-dē\ *n. pl widdies* [ME (Sc), fr. ME *withy*] (15c) *dial Eng*: a rope of osiers 2 *Scot & dial Eng*: a hangman's

**wide** \ˈwi-d\ *adj* wider; **wid-est** [ME, fr. OE *wid*; akin to *wide*] (bef. 12c) 1: a: having great extent: VAST (a ~ area tending over a vast area: EXTENSIVE (a ~ reputation) c: throughout a specified area or scope — usu. used in combination (industry-wide) d: COMPREHENSIVE, INCLUSIVE (a ment) 2: a: having a specified extension from side to side b: having much extent between the sides: BROAD (a ~ door: fully opened (wide-eyed) d: LAX 4 3: a: extending or f considerably between limits (a ~ variation) b: straying or from something specified — used with of (the accusation wa, truth) 4 of an animal ration: relatively rich in carbohydrate

pared with protein *syn* see BROAD — **wide-ness** *n*

**wide adv** wider; **wid-est** (bef. 12c) 1: a: over a great extent: WIDELY (searched far and ~) b: over a specified area, or extent — usu. in combination (expanded the business wide) 2: a: so as to leave much space or distance between to pass at or clear by a considerable distance (ran ~ around 3: to the fullest extent: COMPLETELY, FULLY (~ open)

**wide-angle** \ˈwi-d-ən-ˌgəl\ *adj* (1878) 1: having or covering of view wider than the ordinary — used esp. of lenses of the normal focal length 2: having, involving the use of, or rel. wide-angle lens (a ~ shot)

**wide-awake** \ˈwi-d-ə-ˈwāk\ *n* (1837) 1: a soft felt hat w crown and a wide brim 2: SOOTY TERN

**wide-awake** *adj* (1818) 1: fully awake 2: alertly watch advantages or opportunities *syn* see WATCHFUL

**wide-band** \ˈwi-d-, ˌbænd\ *adj* (1935): BROADBAND

**wide-body** \ˈwi-d-, ˌbɔdē\ *n* (1968): a large jet aircraft

**wide-eyed** \ˈwi-d-ɪd\ *adj* (1853) 1: having the eyes wide with wonder or astonishment 2: having or marked by uncritical or uncritical acceptance or admiration: NAIVE (~ innocent)

**widely** *adv* (1579) 1: over or through a wide area (has tra 2: to a great extent (departed ~ from the previous edition) among a large well-dispersed group of people (a ~ known figure) 4: over a broad range (persons with ~ fluctuating in Current Biog.)

**wide-mouthed** \ˈwi-d-ˌmaʊthd, -ˌmaʊtht\ *adj* (1593) 1: hav mouth opened wide (as in awe) 2: having a wide mouth (~ (1650) to increase the width, scope, or extent of ~ wide or wider — **wid-en-er** \ˈwi-d-nər, ˈwi-d-n-ər\ *n*

**wide-open** \ˈwi-d-ˌə-pən, -ˌə-\ *adj* (1852): having virtually no restrictions (a ~ town)

**wide-out** \ˈwi-d-ˌaʊt\ *n* (1979): WIDE RECEIVER

**wide-rang-ing** \ˈwi-d-, ˌræn-ˌjɪŋ\ *adj* (1816): extensive in scope PREHENSIVE (~ interests)

**wide receiver** *n* (1968): a football receiver who normally several yards to the side of the offensive formation

**wide-screen** *adj* (1931): of or relating to a projected picture aspect ratio is substantially greater than 1.33:1

**wide-spread** \ˈwi-d-ˌspred\ *adj* (1705) 1: widely diffused or (~ public interest) 2: widely extended or spread out (low, and fenders — Time) (a ~ erosion surface — C. B. Hitchcock)

**wide-spread-ing** \-ˌspre-dɪŋ\ *adj* (1591): stretching or extent a wide space or area (~ thatch roofs — Nat'l Geographic)

**wid-get** \ˈwi-jət\ *n* [alter. of *gadger*] (1926) 1: GADGET 2: named article considered for purposes of hypothetical example

**wid-ish** \ˈwi-dɪʃ\ *adj* (1845): somewhat wide

**wid-ow** \ˈwi-(,)dō\ *n* [ME *widewe*, fr. OE *wuduwe*; akin *wituwa* widow, L *vidua*, Skt *vidhava*, L *videre* to separate] (bef. 12c) a: a woman who has lost her husband by death and usu. remarried b: GRASS WIDOW 2 c: a woman whose husband alone frequently or for long periods to engage in a usu. specif ity (a golf ~) 2: an extra hand or part of a hand of cards down and usu. placed at the disposal of the highest bidder 3: usu. short last line (as of a paragraph) separated from its rel and appearing at the top of a printed page or column

**widow** *vt* (14c) 1: to cause to become a widow or widow to survive as the widow of 3: to deprive of something needed or needed

**wid-ow-er** \ˈwi-də-wər\ *n* [ME *widewer*, alter. of *wedow* widower, fr. OE *wuduwa* widower; akin to OE *wuduwe* widow] man who has lost his wife by death and usu. has not remarried

**wid-ow-er-hood** \-ˌhʊd\ *n* (1796) 1: the fact or state of being a widow 2: the period during which a man remains a widower

**wid-ow-hood** \ˈwi-dō-, ˌhʊd-, ˌdā-\ *n* (bef. 12c) 1: the fact of being a widow 2: the period during which a woman remains 3: WIDOWERHOOD

**widow's cruse** *n* [fr. the widow's cruse of oil that miraculously Elijah during a famine (I Kings 17:8-16)] (1816): an inex supply

**widow's peak** *n* (1849): a point formed by the hairline in front

**widow's walk** *n* (1937): a railed observation platform at coastal house

**width** \ˈwið, ˈwiθ\ *n* [ˈwide] (1627) 1: the horizontal ment taken at right angles to the length: BREADTH 2: lar extent or scope 3: a measured and cut piece of material (a ico)

**wield** \ˈwēd\ *vt* [ME *welden* to control, fr. OE *wieldan* OHG *waltan* to rule, L *valere* to be strong, be worth] (bef chiefly dial: to deal successfully with: MANAGE 2: to ha tool) esp. effectively (~ a broom) 3: a: to exert one's aut means of (~ influence) b: have at one's command or di not ~ appropriate credentials — G. W. Bonham — **wield-er**

**wieldy** \ˈwēd-ē\ *adj* (14c): capable of being wielded easily